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lected under Laws 1902-04, §§ 95, 96, 97, must be refunded, since their meaning could not be extended to apply to hotels; the Legislature evidently intending that it should not.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 17; Dec. Dig. § 8 (2).* 9 Va.-W. Va. Enc. Dig. 613.]

For other definitions, see Words and Phrases, First and Second Series, Hotel.]

2. Licenses (§ 34*)—Refunding of License Tax—Voluntary Payment.—Although ordinarily money paid for taxes voluntarily or under mistake of law cannot be refunded, that is not true of license taxes since Code 1904, § 568, provides that any person assessed with a license tax may within one year secure a refund; the general rule being expressly contradicted by such statute.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 68; Dec. Dig. § 34.* 9 Va.-W. Va. Enc. Dig. 306.]

Error to Hustings Court of Richmond.

Proceedings by the Hotel Richmond Corporation and others against the Commonwealth. Heard on writ of error to review an order adverse to the petitioners. Reversed.

R. E. Byrd, of Richmond, for plaintiff in error.

John G. Pollard, Atty. Gen., for the Commonwealth.

ROBINSON *v.* CHRISTIAN.

March 20, 1916.

[88 S. E. 164.]

Courts (§ 42 (6)*)—Establishment—Validity of Statutes.—Acts 1914, c. 142, creating the office of civil and police justice in the cities of Newport News and Alexandria, and providing the jurisdiction thereof, is constitutional and valid.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 181-183; Dec. Dig. § 42 (6).* 3 Va.-W. Va. Enc. Dig. 700.]

Mandamus by E. S. Robinson against T. J. Christian. Order that the writ issue.

S. O. Bland, of Newport News, for plaintiff.

S. Gordon Cumming, of Hampton, for respondent.

SOUTHERN RY. CO. *v.* JONES' ADM'R.

March 16, 1916.

[88 S. E. 178.]

1. Railroads (§ 308)—Operation—Negligence—Crossing Accidents—Violation of Ordinance.—Where a city ordinance required gates to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

be established at a crossing, and to be lowered on the approach of a train, and at the time of an accident the gates were raised, there was no watchman, no bell was rung, nor whistle sounded, nor other warning given, the railroad was negligent.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 978; Dec. Dig. § 308.* 11 Va.-W. Va. Enc. Dig. 573.]

2. Negligence (§ 93 (1)*)—Imputed Negligence—Passengers.—Negligence of the driver of a vehicle cannot be imputed to the passenger, but the passenger must use ordinary care for his own safety.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 147, 148; Dec. Dig. § 93 (1).* 7 Va.-W. Va. Enc. Dig. 340.]

3. Railroads (§ 330 (2)*)—Crossing Accidents—Injuries to Persons—Contributory Negligence.—Plaintiff, who was driving, and his intestate, riding with him, were equally negligent in going on a railroad track in front of a train traveling at about 4 miles an hour, although the gates were open and no warning was given, where they could have seen, had they stopped, looked, or listened.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1072; Dec. Dig. § 330 (2).* 11 Va.-W. Va. Enc. Dig. 592.]

4. Railroads (§ 330 (2)*)—Crossing Accidents—Injuries to Persons—Contributory Negligence.—The mere act of raising gates at a railroad crossing is insufficient to justify a driver in starting across the track without stopping, looking, or listening.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1072; Dec. Dig. § 330 (2).* 11 Va.-W. Va. Enc. Dig. 592.]

5. Railroads (§ 350 (13)*)—Crossing Accidents—Injuries to Persons—Contributory Negligence—Evidence.—A driver approaching a railroad crossing, must use ordinary care for his own protection, and if there is doubt as to whether or not he used such care the question is for the jury; but no jury question is presented where the evidence shows that no care whatever was used.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1166; Dec. Dig. § 1166; Dec. Dig. § 350 (13).* 11 Va.-W. Va. Enc. Dig. 592.]

Error to Circuit Court of City of Richmond.

Action by Joseph Jones, administrator of Harry Jones, deceased, against the Southern Railway Company. Judgment for plaintiff, and defendant brings error. Reversed.

Eppa Hunton, Jr., and *Thos. B. Gay*, both of Richmond, for plaintiff in error.

R. H. Talley and *C. V. Meredith*, both of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.